

ROBERT B. COEN ET AL.

IBLA 78-81

Decided May 31, 1979

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting offer to lease for oil and gas, M 38285.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably require.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and is signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

APPEARANCES: James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellants; Joel Held, Esq., Dallas, Texas, pro se as respondent.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In the simultaneous filing procedure for oil and gas leases, 43 CFR Subpart 3112, priorities of consideration of the drawing entry cards (DEC) for parcel MT 1543 in the September 1977 list were as follows:

1. Robert B. Coen, Wayne Johns, Phillip K. Hills, Jr., James F. Faherty, Michael Goodbody, 100 South Wacker Dr., Room 202, Chicago, Illinois 60606.
2. Joel Held, 6060 North Central Expressway, Suite 254, Dallas, Texas 75206.
3. Mary Oxnard, 100 South Wacker Dr., Room 202, Chicago, Illinois 60606.

By decision dated October 27, 1977, the Montana State Office, Bureau of Land Management (BLM), rejected the first drawn DEC of Coen et al., stating:

The above offerors filed an entry card the week of September 19, 1977, for parcel MT 1543. The signatures on the card were facsimile signatures.

The card was accompanied by a statement as to the contract the offerors entered into with Stewart Capital Corporation. Also accompanying the card was a statement by Stewart Capital Corporation. We will not at this time comment on the contents of the respective statements.

The offerors' signatures on the agreement were machine reproduced. The signature by a representative of Stewart Capital Corporation to their agreement was also machine reproduced. In instances where there appears a facsimile signature on the entry card, this office will not accept signatures to agreements submitted in support of the facsimile signature on the entry card which are either machine reproduced or facsimile. Such signatures must be originally executed by all parties concerned.

Further, there was no evidence submitted to show that the party acting for Stewart Capital Corporation was with authority to so act. In cases of this nature this office will not accept a signature by itself for a corporation. There must be legal evidence submitted in each and every case to clearly show that particular person is with authority to act for the corporation.

For the two reasons above cited, the offerors' entry card is rejected.

This appeal followed. An answer to the statement of reasons for appeal supporting the decision of BLM was submitted by Joel Held, whose DEC had been given second priority for parcel MT 1543.

The DEC of appellants was prepared by and submitted to BLM by Stewart Capital Corporation (Stewart). Inasmuch as the action by Stewart made it the agent of the offerors, within the ambit of 43 CFR 3102.6-1, statements as to the relationship between the offerors and the agent were required. Such statements were attached to the DEC, but as the BLM decision pointed out, the undated statement bore only facsimile signatures of the offerors and of a person ostensibly representing Stewart Capital.

[1] The issue of a facsimile signature on the DEC and on the accompanying statements of interest by the offerors and the agent has recently been considered by this Board in W. H. Gilmore, 41 IBLA 25 (1979). In an en banc decision, from which the author of this decision dissented, the Board held that a DEC lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the DEC and to the separate statement of interest required by 43 CFR 3102.6-1, but BLM may require that the offeror personally verify the information contained in the statement and provide whatever supplemental information that BLM may reasonably desire. Thus, in the light of Gilmore, *supra*, it was error for BLM to reject the DEC of appellants for this reason. As regards the second ground for rejection, viz., the failure to show that the individual whose signature appeared on the corporation's agency statement had authority to act for the corporation, we note that the only regulation which expressly requires proof of the individual's authority to act on behalf of a corporation is found in 43 CFR 3102.4-1. That regulation, however, is only applicable where the corporation is the offeror. Here, the corporation was the agent, not the offeror. While we agree that proof of the authority of the individual to act on the corporation's behalf, when the corporation is the agent of the offeror, is a matter which BLM could properly require, we believe it was error to predicate rejection of the offer on this basis absent a specific demand for such proof, or a specific regulation so requiring. However, examination of the subject DEC discloses a different reason compelling its rejection.

[2] The DEC bears five signatures, those of Robert B. Coen, Wayne Johns, Philip K. Hills, Jr., James F. Faherty, and Michael P. Goodbody, but only a single date, September 19, 1977, opposite the signature of Hills. This is similar to the situation considered by the Board in Thomas R. Flickinger et al., 40 IBLA 53 (1979). In Flickinger, the Board held it is proper to reject a DEC signed by multiple offerors in the simultaneous oil and gas lease drawings if even a single offeror fails to enter the date of his signature on the DEC.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified. The case is remanded to the Montana State Office for further consideration of the second drawn DEC of Joel Held.

Douglas E. Henriques  
Administrative Judge

I concur:

Newton Frishberg  
Chief Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While I, too, dissented from the majority decision in W. H. Gilmore, 41 IBLA 25 (1979), I agree with Judge Henriques that until such time as a majority of the Board is willing to reconsider that decision, it is binding upon us. Accordingly, I concur in Judge Henriques' decision.

James L. Burski  
Administrative Judge.

